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# Legal Paraprofessionalism and Its Implications: A Bibliography\*

Lester Brickman\*\*

## I. INTRODUCTION

To understand properly both the conceptual foundation of the bibliography and the potential socio-legal significance of the legal paraprofessional, it is necessary to comprehend the role of the legal profession in our democracy. The principal actors in the profession are, of course, lawyers who "practice law." One facet of the "practice of law" is "lawyering," a term that may be used to mean the invocation of the legal process to resolve competing claims. The means by which lawyering services are conveyed to the consumer may be termed the "legal services delivery mechanism," which is maintained by the legal profession through its control over lawyers and the practice of law. The heightening realization of the pivotal position of the lawyering process in the attainment of such democratic goals as due process and equal protection accounts in large measure for the increasing concern for the development and utilization of trained lawyers' assistants, who may be referred to generically as "legal paraprofessionals."<sup>1</sup>

Since claims are demands made upon decision-makers that will have impact on the distribution of values in society,<sup>2</sup> the resolution of competing claims determines the social mapping of society. These resolutions are regulated through processes commonly regarded as "legal"

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1. See generally Brickman, *Expansion of the Lawyering Process Through A New Delivery System: The Emergence and State of Legal Paraprofessionalism*, 71 COLUM. L. REV. 1153 (1971).

2. A more detailed analysis of the values of democratic society is contained in McDougal, *The Comparative Study of Law for Policy Purposes: Value Clarification as an Instrument of Democratic World Order*, 61 YALE L.J. 915 (1952). McDougal includes in a listing of democratic values "the wide sharing of power, both formal and effective, including participation in the processes of government and of parties and pressure groups, and equality before the law." *Id.* at 916. See also McDougal, *Perspectives for an International Law of Human Dignity, 1958-1959* in AM. SOC. OF INT'L LAW PROCEEDINGS 107 (1959) (address to the Society); Lasswell & McDougal, *Legal Education & Public Policy: Professional Training in the Public Interest*, 52 YALE L.J. 203, 212 (1943).

or as "the law."<sup>3</sup> Law, however, is a process by which community expectations and legitimacy are created as well as applied. It is both process and the aggregate outcome of process and thus, law not only regulates the resolution of claims, but also their creation, because claims are a consequence of expectations raised by the combined impact of decisional responses to prior claims and the prescriptions emanating from other authoritative decision-makers. Furthermore, in addition to invoking codified norms, claims also dynamically interact to affect the translation of community goals and expectations into new codifications. These in turn are invoked through new claims, resulting in the continuing interaction of claims and the decision-making process. The significance of the process of claim to the attainment of democratic values, such as the greatest possible participation in decision-making and the most widespread enjoyment of human dignity and material goods, and the impact of claims upon the shaping of subsequent responses, highlight the unique role of the lawyer in the legal process. More so than in any other society, the lawyer in America is the evocator in the claim process<sup>4</sup>—the midwife to the flow of legal rights. Thus the lawyering process and therefore the legal services delivery mechanism form one of the authoritative arenas controlling the distribution of values in our society. The United States Supreme Court has recognized this proposition in a recent series of cases holding that assurances of equal protection of the laws are not adequate in the absence of equal access to the claim processes that weigh and respond to alleged deprivations and thwarted expectations.<sup>5</sup>

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3. "Law" can be described as that confluence of authority—legitimacy based upon the expectations of society—which has the ability to control behavior through the maintenance of credible sanctions. McDougal & Lasswell, *The Identification and Appraisal of Diverse Systems of Public Order*, 53 AM. J. INT. L. 1, 9 (1959). "The 'law' . . . is still too often regarded as a body of doctrine or rules, divorced from power and social processes." McDougal, *supra* note 2, at 919.

4. As the principal evocator in the claim process, the lawyer has acquired intimate knowledge of the workings of the power process and as a consequence has become an integral part of that process. "[T]he lawyer is today, even when not himself a 'maker' of policy, the one indispensable advisor of every responsible policy-maker of our society . . ." *Id.* at 208. "In the United States and England, lawyers fill significant roles at every stage of [the legal] process, and their influential position is largely attributable to their qualifications, availability, and acceptance. They are uniquely familiar with the precepts and techniques of formal authority: legal doctrine and its applications. They are readily available to most strata of society as counselors, advocates, and decision makers. . . . In short, they comprise the principal occupation providing legal services." Q. JOHNSTONE & D. HOPSON, *LAWYERS AND THEIR WORK: AN ANALYSIS OF THE LEGAL PROFESSION IN THE UNITED STATES AND ENGLAND* 3 (1967). *See also* A. DE TOCQUEVILLE, *DEMOCRACY IN AMERICA* 273 (Bradley ed. 1945).

5. *See* *United Transp. Union v. State Bar*, 401 U.S. 576 (1971); *UMW v. Illinois State Bar Ass'n*, 389 U.S. 217 (1967); *Brotherhood of R.R. Trainmen v. Virginia Bar*, 377 U.S. 1 (1964); *NAACP v. Button*, 371 U.S. 415 (1963). The above are basically equal protection cases; they provide that if it is necessary to band together to afford the services of a lawyer in order to secure

If access to legal services is thus essential for the attainment of democratic values, then the efficacy of the legal delivery system is of supreme importance. Much has been written examining the inefficiency of present methods of law practice as a means of conveying services to the consumer,<sup>6</sup> and still more written decrying the shortage of basic legal services for the poor<sup>7</sup> and for the middle class.<sup>8</sup> In response to this criticism and as a way of meeting other needs, the profession is trying such new delivery systems as group legal services, prepaid legal insurance, and specialized practice.<sup>9</sup> Additionally, there has been a virtual explosion of interest in using legal paraprofessionals to assist the lawyer in supplying legal services.<sup>10</sup> The conceptual foundations of this bibliography thus proceed from these theses: that there are grave concerns for the efficacy of the legal services delivery system<sup>11</sup> and for its ability to meet greatly increasing demands for legal services;<sup>12</sup> and that, in re-

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meaningful access to the courts, the equal protection clause protects this action. The access of groups to legal counsel, whether for political or economic purposes, is to be protected as against traditional state interests in the regulation of the practice of law. *United Transp. Union v. State Bar*, *supra* at 582. This quadrumvirate of cases thus stands for the proposition that the development and preservation of legal rights is only meaningful if effective advocates can present claims invoking those rights. *Id.* at 578.

6. The "operating patterns of the legal profession have remained essentially static. . . ." Manning, *Introduction: New Tasks for Lawyers*, in *LAW IN A CHANGING SOCIETY* 8 (Hazard ed. 1968). Indeed, "[t]he lawyer of today is in no better state, as far as his own productivity is concerned, than the lawyer of fifty years ago—and not very much better than the one of 200 years ago." Early, *The Case for Legal Nurses*, *CASE & COM.* 36 (1969). See also Q. JOHNSTONE & D. HOPSON, *supra* note 4, at 7.

7. See, e.g., E. BROWNELL, *LEGAL AID IN THE UNITED STATES* (1951); R. WHITE & J. STEIN, *PARAPROFESSIONALS IN LEGAL SERVICES PROGRAMS: A FEASIBILITY STUDY* 3-11 (1968); Pye, *The Role of Legal Services in the Antipoverty Program*, 31 *LAW & CONTEMP. PROB.* 211 (1966).

8. See, e.g., E. CHEATHAM, *A LAWYER WHEN NEEDED* (1965); Brown, *Law Offices for Middle-Income Clients*, 40 *CAL. S.B.J.* 720 (1965). A survey of the legal needs of 2,200 California school teachers earning \$10,000 to \$15,000 a year revealed that more than 25% had experienced a legal problem within the past 5 years concerning defective goods or consumer warranties but that only 3.5% had ever spoken with a lawyer and only 1.1% had retained counsel. *Wall Street J.*, May 17, 1971, at 1, col. 1.

9. See, e.g., B. CHRISTENSEN, *LAWYERS FOR PEOPLE OF MODERATE MEANS* 83 (1970); Paulson, *Report on the Needed Legal Services Project*, *PROCEEDINGS OF THE ASSOCIATION OF AMERICAN LAW SCHOOLS* 292, 300-03 (1966); Gallon, *Group Practice—A Potential Bonanza for All Lawyers*, 3 *LAW & POVERTY* 15 (May 1969); Politz, *The Long-Sought Answer?*, *TRIAL* 29 (Mar.-Apr. 1971); Stolz, *Insurance for Legal Services: A Preliminary Study of Feasibility*, 35 *U. CHI. L. REV.* 417, 422 (1968); cf. Q. JOHNSTONE & D. HOPSON, *supra* note 4, at 131-59.

10. See Brickman, *supra* note 1.

11. See, e.g., Q. JOHNSTONE & D. HOPSON, *supra* note 4, at 7; Smith, *Vertical Expansion of the Legal Services Team*, 56 *A.B.A.J.* 664 (1970).

12. See, e.g., R. WHITE & J. STEIN, *supra* note 7, at 1; R. YEGGE, W. MOORE, & H. HOLME, *NEW CAREERS IN LAW: MEETING PRESENT AND PROSPECTIVE LEGAL NEEDS* 23-39 (1969); Note, *Law Clerks and the Unauthorized Practice of Law*, 46 *CHI.-KENT L. REV.* 214, 220 (1969);

sponse to these concerns, an attempt is being made to reform the delivery system by incorporating legal paraprofessionals into the delivery mechanism.

The portion of the bibliography printed in this review, which deals with legal paraprofessionals and is printed in its entirety, is responsive to such issues as recruiting and training legal paraprofessionals, the situs for the training, the different roles that are subsumed, the societal and professional needs that are fulfilled, the different types of lawyers' assistants now extant, and proposed new types. The larger work,<sup>13</sup> from which

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Merson, *Meeting Legal Needs: A New Malthusian Doctrine*, 47 DENVER L.J. 54 (1970); Smith, *supra* note 11, at 664. A bibliography of the literature on the availability of legal services is printed at the conclusion of *The Availability of Counsel and Group Legal Services: A Symposium*, 12 U.C.L.A.L. REV. 279, 456-63 (1965). See also Christensen, *Group Legal Services* 5 n.18 (American Bar Foundation, Tent. Draft, 1967).

13. The following outline indicates the breadth of coverage of the complete bibliography:

- I. Organization and Operation of the Legal Profession
  - A. The Lawyer and the Legal Profession
  - B. Income and Economic Status of the Lawyer
    1. In General
    2. Economic Status of Lawyers on a Statewide Basis
    3. Cost of Litigation and Legal Counsel
    4. Cost of Nonlegal Personnel in the Law Office
  - C. Management of the Law Office
  - D. Law Office Forms and Manuals
  - E. Practice of Law in Foreign Countries
    1. In General
    2. England
    3. Israel
- II. Regulation of the Practice of Law
  - A. Representation Before Administrative Agencies
  - B. Unauthorized Practice
    1. In General
    2. Abstract and Title Companies
    3. Accountants and Income Tax Preparation
    4. Banks and Trust Companies
    5. Collection Agencies
    6. Patent Law
    7. Real Estate Brokers
- III. Availability and Provision of Legal Services
  - A. In General
  - B. Lawyers for the Poor
  - C. Lawyers for the Middle Class
  - D. Delivery Systems
    1. Lawyer Referral Systems
    2. Group Legal Services
    3. Prepaid Legal Insurance
    4. Specialization
    5. Legal Secretaries
      - a. In General
      - b. From Legal Secretary to Lay Assistant: The Gap is Bridged

the printed portion has been excerpted, is organized into four major sections: Organization and Operation of the Legal Profession; Regulation of the Practice of Law; Availability and Provision of Legal Services; and New Careers. The first section provides information on the organizational format of the legal profession and those features that affect the utilization of paraprofessionals including the economic status of the Bar, cost patterns of litigation, and internal management mechanisms.<sup>14</sup> The second section deals with the "unauthorized practice" issue that may arise when paraprofessionals are utilized to assist in the performance of legal tasks. The third major division carries forward the focal point of the entire bibliography—the need for reform of the legal services delivery mechanism in order to make legal services more widely available. The concluding section is a listing of the literature on nonlegal paraprofessionals.

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- 6. Legal Paraprofessionals
    - a. In General
    - b. Employment of Nonlawyer Professionals by Lawyers
    - c. Job Descriptions and Role Analysis
    - d. Ethical Considerations
    - e. Development and Use of Lay Assistants
      - (1) In General
      - (2) Proposals
    - f. Development and Use of Lay Advocates
      - (1) In General
      - (2) Proposals
    - g. Law School Seminars on Paraprofessionals
    - h. Training the Paraprofessional
      - (1) Junior College Curricula
      - (2) Training Institutions and Materials
      - (3) Teaching Law on Other than the Law School Level
    - i. Questionnaires and Surveys
  - IV. New Careers in the Human Services: The Development of (Nonlegal) Paraprofessionals
    - A. In General
    - B. Training and Training Materials
    - C. Occupational Socialization
    - D. New Careers
      - 1. The Mental Health Aide
      - 2. The Health Services Aide
      - 3. The Community Action Aide
      - 4. The Human or Social Services Aide
      - 5. The Police Aide
      - 6. The Elementary School Teacher Aide
      - 7. The Family Planning Aide
      - 8. In Public Employment and Local Government
      - 9. In the Model Cities Program
      - 10. In the Corrections Process

The portion included in this review corresponds with § III-D-6 of the above.

14. The coverage of law office forms and manuals stems from a recognition of the importance of the systems approach to a law practice and its close relation to legal paraprofessionalism.

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